

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:22-CV-137-D

HEAT WAVE RECORDING, LLC,

Plaintiff,

v.

BLUEWATER RECORDINGS, INC.,
BOBBY TOMLINSON, CHARLES
WALLERT, AUDIO AND VIDEO LABS,
INC.,

Defendants.

ORDER

This matter is before the clerk on the plaintiff's second motion for entry of default as to defendant Charles Wallert [DE-18]. For the reasons set forth below, the motion is DENIED.

Plaintiff initiated this action by filing a complaint alleging claims against defendant Wallert and others. As to defendant Wallert specifically, plaintiff asserted a claim for copyright infringement in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501 and also alleged that the corporate veil of defendant Bluewater Recordings, Inc., should be pierced to hold defendant Wallert and another individual defendant responsible for claims asserted against Bluewater. See Compl. [DE-1] ¶¶ 51-63; 112-128.

Plaintiff filed an affidavit of service as to defendant Wallert on April 23, 2022 [DE-9]. On May 9, 2022, plaintiff filed a motion for entry of default, as well as an amended complaint [DE-15]. The amended complaint adds a claim for wrongful interference with a contractual right against defendant Wallert. See Amend. Compl. [DE-15] ¶¶ 102-106.

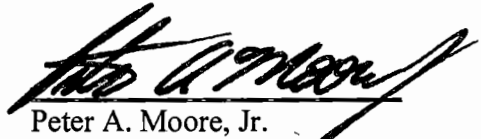
The clerk denied the motion for entry of default in an order filed on June 3, 2022 [DE-16]. In that order, the clerk explained that the record contained no showing of service of the amended complaint on defendant Wallert pursuant to Rule 4 of the Federal Rules of Civil Procedure. See Fed.

R. Civ. P. 5(a)(2) ("No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.").

Plaintiff filed the second motion for entry of default, stating that defendant Wallert was served with the amended complaint pursuant to Rule 5 of the Federal Rules of Civil Procedure. As stated in the June 3, 2022, Order, however, plaintiff must serve defendant Wallert pursuant to Rule 4 because the amended complaint asserts a new additional claim against him.

Accordingly, for the same reasons stated in the June 3, 2022 Order [DE-16], the second motion for entry of default [DE-18] is DENIED.

SO ORDERED. This the 20 day of September, 2022.


Peter A. Moore, Jr.
Clerk of Court